Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109

NOTICE OF PROPOSED RULEMAKING

Adopted: March 3, 2011 **Released: March 4, 2011**

Initial Comment Date: April 21, 2011
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Reply Comment Date on the Remaining Sections: May 25, 2011

By the Commission: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker issuing separate statements.

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I. INTRODUCTION

1. Lifeline and Link Up are a critical part of the Commission's universal service mission, ensuring that we implement Congress's directive to ensure the availability of basic communications services to all Americans, including low-income consumers.[1] For more than two decades, Lifeline and Link Up (together, "Lifeline/Link Up" or "the program") have helped tens of millions of Americans afford basic phone service, providing a "lifeline" for essential daily communications as well as emergencies. But recent technological, market, and regulatory changes have put increasing strain on the program. Today, we begin to comprehensively reform and modernize the Lifeline and Link Up program. Building on proposals from the National Broadband Plan,[2] as well as recent recommendations from the Federal-State Joint Board on Universal Service ("Joint Board") and the Government Accountability Office (GAO),[3] the reforms proposed here will significantly bolster protections against waste, fraud, and abuse; control the size of the program; strengthen program administration and accountability; improve enrollment and outreach efforts; and support pilot projects that would assist the Commission in assessing strategies to increase broadband adoption, while not increasing overall program size.

2. Our effort is consistent with the Commission's ongoing commitment to re-examine and modernize all components of USF to increase accountability and efficiency, while supporting broadband deployment and adoption. The Commission has already made important strides in this area: We have modernized our E-rate program so schools and libraries can get faster Internet connections and access 21st century learning tools.[4] We have proposed changes to our rural health care program so patients at rural clinics can benefit from broadband-enabled care such as remote consultations with specialists anywhere in the country.[5] And we have proposed a Mobility Fund and a Connect America Fund to spur the build out of broadband networks, both mobile and fixed, in areas of the country that are uneconomic to serve.[6]

3. The Commission has not systematically re-examined Lifeline/Link Up since the passage

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[1] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act); *see also* 47 U.S.C. § 254(b)(1), (3) (services should be available at "affordable" rates and "consumers in all regions of the nation, including low-income consumers, . . . should have access to telecommunications and information services").

[2] *See* FEDERAL COMMUNICATIONS COMMISSION, OMNIBUS BROADBAND INITIATIVE, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2010) (NATIONAL BROADBAND PLAN), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf.

[3] *Federal-State Joint Board on Universal Service, Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, Recommended Decision, 25 FCC Rcd 15598 (Jt. Bd. 2010) (*2010 Recommended Decision*); U.S. GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, GAO 11-11, TELECOMMUNICATIONS: IMPROVED MANAGEMENT CAN ENHANCE FCC DECISION MAKING FOR THE UNIVERSAL SERVICE FUND LOW-INCOME PROGRAM (2010) (2010 GAO REPORT).

[4] *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762 (2010) (*E-rate Sixth Report and Order*).

[5] *Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Notice of Proposed Rulemaking, 25 FCC Rcd 9371 (2010) (*Rural Health Care NPRM*).

[6] *See Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, para. 487 (rel. Feb. 9, 2011) (*USF/ICC Transformation NPRM*); *Universal Service Reform, Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010).

of the 1996 Act.[7] During this period, consumers have increasingly turned to wireless service, and Lifeline/Link Up now provides many participants discounts on wireless phone service. In the last several years, Lifeline/Link Up has grown significantly, from an inflation-adjusted $667 million in 2000[8] to $1.3 billion in 2010,[9] with new participation by firms, such as pre-paid wireless providers, that focus on serving low-income consumers. The time has come to review the program holistically, address the risks and challenges it now presents, and ensure that it is on a firm footing to efficiently and effectively achieve its statutory purpose.

4. Accordingly, last year the Commission asked the Joint Board to recommend reforms focused on eliminating waste, fraud, and abuse; controlling costs; and improving program performance and accountability.[10] In response, the Joint Board recommended that the Commission: (1) encourage automatic enrollment as a best practice for all states; (2) adopt uniform minimum verification procedures and sampling criteria that would apply to all ETCs in all states; (3) allow states to utilize different and/or additional verification procedures so long as these procedures are at least as effective in detecting waste, fraud, and abuse as the uniform minimum required procedures; (4) require all ETCs in all states to submit the data results of their verification sampling to the Commission, the states, and the Universal Service Administrative Company and make the results publicly available; and (5) adopt mandatory outreach requirements for all ETCs that receive low-income support and maintain advisory guidelines for states with respect to performing low-income outreach.[11] We seek comment on the Joint Board's recommendations here. The Wireline Competition Bureau has also taken a number of steps to combat waste, fraud, and abuse, including requiring one provider to contact annually all of its Lifeline subscribers to ensure those customers are only receiving one benefit per household[12] and requiring another provider to remove customers from its Lifeline roster if they do not use their phones for sixty days.[13] And late last

[7] In 2000, the Commission established enhanced benefits for households on Tribal lands. *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12231-32, paras. 42-43 (2000) (*Tribal Order*). In 2004, the Commission made a number of discrete changes to the program, including changing eligibility criteria for qualifying households in certain states and adopting outreach guidelines for carriers, but did not examine the overall program structure. *See Lifeline and Link-Up,* WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004) (*2004 Lifeline and Link Up Order/FNPRM*).

[8] *See* Universal Service Administrative Company, Quarterly Administrative Filings for 2001, Second Quarter (2Q), Appendices at LI04 (filed Jan. 15, 2001) (USAC 2Q 2001 FILING), *available at* http://usac.org/about/governance/fcc-filings/2001/quarter2/default.aspx. Adjustments for inflation were calculated using the Bureau of Labor Statistics' Consumer Price Index Inflation Calendar. *See* http://www.bls.gov/data/inflation_calculator.htm (last visited Mar. 1, 2011).

[9] This figure is based on USAC disbursements in 2010, which may be adjusted by true-ups. *See* UNIVERSAL SERVICE ADMINISTRATIVE COMPANY, QUARTERLY ADMINISTRATIVE FILINGS FOR 2011, SECOND QUARTER (2Q), APPENDICES AT M04 (filed Jan. 31, 2011) (USAC 2Q 2011 FILING), *available at* http://www.usac.org/about/governance/fcc-filings/2011/quarter-2.aspx.

[10] *See Federal-State Joint Board on Universal Service, Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, Order, 25 FCC Rcd 5079, 5079, para. 1 (2010) (*2010 Joint Board Referral Order*).

[11] *2010 Recommended Decision*, 25 FCC Rcd at 15599, para. 2.

[12] *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al.*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008) (*TracFone ETC Designation Order*).

[13] *Telecommunications Carriers Eligible for Universal Service Support; Virgin Mobile USA, L.P. Petitions for Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, District of* (continued….)

year, the GAO issued a report with recommendations for program reforms,[14] which also inform our proposals here.

5. This Notice of Proposed Rulemaking (NPRM) puts forward a set of proposals to reform and modernize Lifeline/Link Up, including recommendations of the Joint Board, GAO, and the National Broadband Plan.

6. We begin by proposing specific performance goals for the program, and metrics to measure its performance in advancing the universal service objectives established by Congress. We then propose immediate steps to address waste, fraud, and abuse and to bolster mechanisms to detect and deter rule violations. In particular, we propose to strengthen our rules and improve the incentives of program participants to ensure that the program does not provide multiple, duplicative discounts to the same residential address. We also propose to eliminate reimbursement for certain services, including initiation fees that may be inflated or selectively applied only to low-income households. To reduce waste by ensuring that the program supports only communications services that consumers actually use, we propose to eliminate funding for services that go unused for more than sixty days. We seek comment on expanding oversight, including through more extensive audits. We also seek comment on a proposal to impose an annual funding cap on Lifeline/Link Up, either temporarily—until implementation of the reforms proposed in this Notice—or permanently.

7. This NPRM also addresses the unique situations facing residents on Tribal lands, who historically have had phone penetration substantially below the national average. We propose to clarify eligibility requirements for low-income Tribal households, and to permit Tribal enrollment based on participation in the Food Distribution Program on Indian Reservations.

8. This NPRM also seeks comment on a number of proposals to streamline and improve overall program administration. We ask whether the current system—in which responsibility for enrolling customers and ensuring their continued eligibility is split among carriers, state agencies, and third-party administrators—provides the right framework for prudent management of public resources and effective program administration. We propose to require all states to utilize the same baseline eligibility requirements that exist in our federal rules, which could streamline enrollment and facilitate verification of ongoing eligibility, and seek comment on allowing states to use eligibility standards that supplement the minimum federal uniform standards. Consistent with the recommendation of the Joint Board, we propose uniform national standards for the minimum verification of ongoing customer eligibility to stay enrolled in Lifeline and seek comment on whether states should be permitted to impose additional verification requirements beyond that federal standard. We also seek comment on a proposal to use an automated information management system to prevent duplicate claims for support, provide real-time electronic verification of consumer eligibility, and provide a means of ongoing verification of eligibility

9. We also ask how the program should be modernized in light of significant marketplace changes in the last fifteen years. We seek to develop a record on what basic services the program should support, and we seek comment on whether the current framework for determining reimbursement levels remains appropriate in an environment when many service offerings are not rate regulated.

10. We also propose reforms to put Lifeline/Link Up on a more solid footing to achieve Congress's goal of addressing the 21st century challenge of helping low-income households adopt

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(Continued from previous page)
Columbia, Delaware, New Hampshire, WC Docket No. 09-197, Order, DA 10-2433, at para. 24 (rel. Dec. 29, 2010) (*Virgin Mobile 2010 ETC Order*)

[14] *See* 2010 GAO REPORT at 3.

broadband. Although access to affordable voice service remains vital to consumers,[15] supporting basic voice service alone may no longer be adequate to meet the basic communications needs of low-income Americans. Broadband is becoming an essential communications platform. Broadband can help working parents stay involved in their child's education, enroll in and complete a distance-learning class to improve professional skills, and complete everyday tasks like paying bills and shopping for necessities. Broadband can help children in inner-city neighborhoods and remote rural towns access high-quality online educational content that might not otherwise be available to them. Broadband can help the unemployed search for jobs and apply for job postings, many of which are simply not available offline.

11. But many low-income Americans cannot afford a home broadband connection. Our 2010 Broadband Consumer Survey found that while 93 percent of households with incomes greater than $75,000 have broadband at home, only 40 percent of adults with household incomes less than $20,000 have broadband at home.[16] And consumers cited cost as a primary obstacle to adoption.[17] This gap in broadband adoption is significantly greater than the gap in telephone penetration rates.[18] While Lifeline and Link Up have significantly narrowed the telephone subscribership gap between low-income households and the national average, a new divide has emerged for broadband.

12. Consistent with our statutory obligation to ensure access to quality, affordable communications, we seek comment on proposals to ensure Lifeline and Link Up meet the modern communications needs of low-income consumers. In particular, we propose that eligible households be permitted to use Lifeline discounts on bundled voice and broadband service offerings. We also seek comment on how best to design a broadband pilot program that will help inform the Commission's inquiry into meeting the 21st century communications needs of low-income consumers.

II. BACKGROUND

13. *History.* Universal service has been a national objective since the Communications Act of 1934, in which Congress stated its intention to "make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."[19] In 1996, Congress codified the Commission's and the states' commitment to advancing the availability of telecommunications services to all

[15] *See* Letter from Mitchell F. Brecher, Greenberg Traurig, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-109, Enclosure 2 (filed Dec. 7, 2010) (TracFone Dec. 7, 2010 *Ex Parte* Letter) (providing statements of Catholic Charities USA and the Hispanic Federation discussing the importance of the Lifeline program).

[16] *See* John B. Horrigan, PhD, *Broadband Adoption and Use in America* 13, Exhibit 1 (Fed. Comm. Comm'n, OBI Working Paper Series, Working Paper No. 1, 2010) (*Broadband Adoption and Use in America*), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf.

[17] *Broadband Adoption and Use in America* at 5; *see also* U.S. DEP'T OF COMMERCE, NAT'L TELECOMM. & INFO. ADMIN., DIGITAL NATION: EXPANDING INTERNET USAGE 5 (2011) (NTIA DIGITAL NATION), *available at* http://www.ntia.doc.gov/reports/2011/NTIA_Internet_Use_Report_February_2011.pdf (presenting a more up-to-date, but less detailed, analysis of the reasons why consumers have not adopted broadband at home and finding cost to be the most important factor among Internet users who do not have broadband at home, but finding "don't need/not interested" the leading reason among consumers who do not use the Internet anywhere).

[18] As of March 2009, 90% of low-income households subscribed to telephone service in their home, compared to a national average of 96 percent. *See Universal Service Monitoring Report*, CC Docket No. 98-202, Prepared for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Table 2-2 (2010) (*2010 Universal Service Monitoring Report*), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1230/DOC-303886A4.pdf; *see infra* paras. 25-27 (trends).

[19] 47 U.S.C. § 151 (creating the Federal Communications Commission).

Americans, and established principles upon which the Commission shall base policies for the preservation and advancement of universal service.[20] Among other things, Congress articulated national goals that services should be available at "affordable" rates and that "consumers in all regions of the nation, including low-income consumers, . . . should have access to telecommunications and information services."[21]

14. Lifeline was originally implemented in 1985 to ensure that the increase in local rates that occurred in the aftermath of the breakup of AT&T would not put local phone service out of reach for low-income households. Support for low-income households has long been a partnership between the states and the federal government, and the universal service program historically was administered in cooperation with state regulators through the ratemaking process.[22] The program originally was designed to allow companies to be made whole for foregone revenues associated with discounts provided to eligible Lifeline/Link Up consumers. The program was never intended to provide a profit for service providers.

15. The program was revised and expanded after passage of the Telecommunications Act of 1996, based on recommendations of the Joint Board.[23] After the 1996 Act, all states participated in the program, and the level of federal Lifeline/Link Up support increased. The Commission broadened participation to all Eligible Telecommunications Carriers (ETCs), making the provision of Lifeline service a condition of being an ETC.[24] The program is administered by the Universal Service Administrative Company (USAC) under Commission direction, although many key attributes of the program still are implemented at the state level.

16. Funding is not provided directly to the low-income consumers it benefits. Rather, ETCs provide discounts to eligible households and receive reimbursement from the Universal Service Fund for the provision of such discounts.[25] Today, Lifeline provides discounts of up to $10 on monthly telephone

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[20] 47 U.S.C. § 254(b).

[21] *See* 47 U.S.C. § 254(b)(1),(3); *see also* 47 U.S.C. § 151.

[22] In particular, the Commission waived the federal subscriber line charge – which enabled telephone companies to increase local rates – in those states which provided some level of matching support. The Commission originally established the Lifeline and Link Up programs pursuant to its general authority under sections 1, 4(i), 201, and 205 of the Communications Act of 1934. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8952-53, para. 329 (1997) (subsequent history omitted) (*Universal Service First Report and Order*).

[23] *See Universal Service First Report and Order*, 12 FCC Rcd at 8952, paras. 326-28. The Joint Board is comprised of FCC commissioners, state utility commissioners, and a consumer advocate representative. *See* 47 U.S.C. §§ 254(a)(1), 410(c).

[24] Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations. 47 U.S.C. § 214(e)(2); *see Tribal Order*, 15 FCC Rcd at 12255, para. 93. Section 214(e)(6) directs the Commission to, on request, designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission." 47 U.S.C. § 214(e)(6); *see Tribal Order*, 15 FCC Rcd at 12255, para. 92.

[25] Carriers file FCC Forms 497 to receive reimbursement for providing Lifeline/Link Up support to eligible subscribers. USAC, Low Income, Step 6: Submit Lifeline and Link Up Worksheet, http://usac.org/li/telecom/step06/default.aspx (last visited Mar. 1, 2011). ETCs may file their Forms 497 on either a monthly or quarterly basis, and are reimbursed by USAC on a monthly basis. *Id.*; USAC, Low Income, Step 7: Payment Process and Status, http://usac.org/li/telecom/step07/default.aspx (last visited Mar. 1, 2011).

charges,[26] and Link Up provides a discount of up to $30 on the cost of commencing telephone service for qualifying low-income households.[27] These amounts may be supplemented by additional funding provided from state universal service funds in some states. Discounts are available for one telephone line, either fixed (typically wireline) or mobile (wireless), per eligible household.

17. *Characteristics of the Marketplace.* Much of the structure of the current program reflects its origins, even though the communications marketplace has changed dramatically in the last fifteen years. When the program was first established, mobile phones did not exist as a consumer product, only incumbent telephone companies provided local telephone service, and the program was designed for carriers whose rates were regulated. Today, consumers have various options for fixed or mobile voice services, many of which are not rate regulated. Mobile phone service is vastly more prominent than even a few years ago—more than 25 percent of adults in the general population live in households with only wireless phones, while 40 percent of 18-24 year olds have "cut the cord."[28] Furthermore, consumers today often purchase packages of services that allow them to call anywhere in the country, with no additional charge for long distance calling.

18. *Bifurcated Federal and State Responsibilities.* The current federal-state structure of the program presents challenges in managing the program's size and preventing waste, fraud, and abuse. Although Lifeline/Link Up is a federal program, its administration varies significantly among the states for such key questions as who is eligible for benefits, how eligible consumers are enrolled, what certifications of eligibility are required, and how ongoing eligibility is verified.

19. States that do not maintain their own low-income programs are known as federal default states. There currently are ten default states (eight states and two territories).[29] The remaining states do not follow all federal rules.

20. Discounts are available to households that qualify as "low-income," but there is no uniform national definition for that term. Instead, when the Commission implemented the 1996 Act, it chose not to disturb the framework already in place under which states with their own programs determined qualifications for Lifeline. States must base eligibility criteria solely on income or factors directly related to income, but within that general rule states take varying approaches.[30] For instance, of the twenty-two states that allow participation based on income alone, some have established an income threshold that is higher than the Commission's, which enables more low-income households to enroll,

[26] As discussed *infra*, Lifeline support amounts vary from state to state, depending on various factors affecting the tiers of support established in section 54.403 of the Commission's rules. For eligible consumers living on tribal lands, the monthly discount is up to $25. *See infra* Section IX.A.2.

[27] In addition, carriers may be reimbursed for their provision of Toll Limitation Service to eligible households, which enables those consumers to obtain toll blocking or toll control at no cost. 47 C.F.R. § 54.403(c).

[28] STEPHEN J. BLUMBERG AND JULIAN V. LUKE, CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL CENTER FOR HEALTH STATISTICS, WIRELESS SUBSTITUTION: EARLY RELEASE OF ESTIMATES FROM THE NATIONAL HEALTH INTERVIEW SURVEY, JANUARY - JUNE 2010 2-3 (2010) (WIRELESS SUBSTITUTION SURVEY), *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201012.pdf.

[29] The current federal default states are Delaware, Hawaii, Indiana, Iowa, Louisiana, New Hampshire, North Dakota, South Dakota, American Samoa, and the Northern Mariana Islands. *See* Universal Service Administrative Company (USAC) website, Low Income, Frequently Asked Questions, http://www.universalservice.org/li/tools/frequently-asked-questions/faq-lifeline-linkup-order.aspx#q1 (last visited Mar. 1, 2011).

[30] *See* 47 C.F.R. §§ 54.409 (consumer qualification for Lifeline), 54.410 (certification and verification of consumer qualification for Lifeline), 54.415 (consumer qualification for Link Up), 54.416 (certification of consumer qualification for Link Up). States must base eligibility criteria solely on income or factors directly related to income. 47 C.F.R. §§ 54.409(a), 54.415(a).

while others have established a lower threshold.[31]

21. The Commission's eligibility criteria encompass households at or below 135 percent of the federal poverty guidelines, and households that participate in various income-based public-assistance programs, such as Medicaid, Food Stamps, and Federal Public Housing Assistance.[32] As shown below in Chart 1, a family of three would be eligible to receive low-income benefits under the Commission's rules if total household income were less than $25,016 per year.

Chart 1

135% of Federal Poverty Guidelines in 48 Contiguous States & D.C.	
Persons in Family or Household	Income Threshold
1	$ 14,702
2	$ 19,859
3	$ 25,016
4	$ 30,173

22. Practices also differ from state to state regarding how the program is administered. In the federal default states, and in many states that have their own low-income program, ETCs are responsible for processing applications, certifying that applicants are eligible for benefits, and verifying ongoing eligibility.[34] In other states, some or all of these functions may be performed by the state public utility commission, another state agency, or a third-party administrator.[35]

23. Administrative processes to mitigate waste, fraud and abuse are also inconsistent. For

[31] 2010 GAO REPORT at 50.

[32] 47 C.F.R. § 54.409(b). If a consumer's eligibility is based on income, the consumer must provide acceptable documentation of income eligibility including, among other things, the prior year's state, federal, or tribal tax return and a current income statement from an employer. 47 C.F.R. §§ 54.410(a)(2), 54.416.

[33] Annual Update of the U.S. Dep't. of Health and Human Servs. Poverty Guidelines, 76 Fed. Reg. 3,367, 3,637-38 (Jan. 20, 2011).

[34] *See* 47 C.F.R. §§ 54.409, 54.410, 54.415, 54.416. In contrast, consumers seeking social service benefits from other federal programs such as the Low Income Home Energy Assistance Program (LIHEAP), Temporary Assistance for Needy Families (TANF), or the Supplemental Nutrition Assistance Program (SNAP) typically file an application with a state social services office, which then verifies the consumer's eligibility for the program. *See, e.g.*, Nevada Division of Welfare, Energy Assistance Program – How to Apply, https://dwss.nv.gov/index.php?option=com_content&task=view&id=120&Itemid=286 (last visited Mar. 1, 2011); Virginia Department of Social Services, Temporary Assistance for Needy Families, http://www.dss.virginia.gov/benefit/tanf/index.cgi (last visited Mar. 1, 2011); Oregon Department of Human Services, SNAP Applicant and Recipient Information, http://www.oregon.gov/DHS/assistance/foodstamps/snap-info.shtml#apply (last visited Mar. 1, 2011).

[35] As of a 2006 survey conducted by the National Regulatory Research Institute, in twelve states the program was administered by the public utility commission, in twelve states the program was administered by another state agency, in eight states the program was administered by a third party, and in six states the program was administered by the telecommunications carrier. For instance, California, Oklahoma and Texas use a third party administrator to perform these functions. In Montana, the Department of Public Health and Human Services certifies and verifies eligibility, while the public utility commission sets the discount and approves tariff rates for Lifeline service. NATIONAL REGULATORY RESEARCH INSTITUTE (NRRI), STATE UNIVERSAL SERVICE FUNDING MECHANISMS: RESULTS OF NRRI'S 2005-2006 SURVEY 55, Table 34 (2006) (NRRI STUDY).

instance, while twenty-two states permit enrollment based on income, not all require documentation of income. Six states permit self-certification of income under penalty of perjury. Fourteen states conduct random audits of Lifeline recipients, while ten states conduct audits of ETCs.[36]

24. Carriers offering Lifeline services in the ten federal default states must verify annually the continued eligibility of a statistically valid random sample of their Lifeline subscribers.[37] According to GAO, seventeen of the other states require verification of a statistically valid sample of low-income households, and thirteen have an online verification system that uses databases from public assistance programs or income reports.[38] Only federal default states and a handful of other states require ETCs to submit the results of annual verifications to USAC,[39] providing the Commission with an incomplete picture of whether there is waste, fraud and abuse in the program.

25. *Trends*. There is significant variation among the states in the percentage of eligible households participating in the program, which may be due to state eligibility requirements, the extent of outreach, the process for enrolling customers, the number and type of ETCs in the state, support levels, and other factors.[40] In 2009, 8.6 million eligible households participated in Lifeline nationwide, which represented 33 percent of the 25.7 million low-income households at the time.[41] Chart 2 below illustrates the variation in estimated participation rates among the states.

[36] 2010 GAO REPORT at 51, Table 6.

[37] 47 C.F.R. § 54.410(c)(2). In a February 2010 declaratory ruling, the Commission found that when a state commission mandates Lifeline support, but does not impose certification and verification requirements on certain carriers within the state, the affected carriers must follow federal default certification and verification requirements. *Lifeline and Link Up*; *Petitions for Declaratory Ruling and Requests for Waiver by US Cellular Corporation, et al.*, WC Docket No. 03-109, Order and Declaratory Ruling, 25 FCC Rcd 1641, 1645, para. 9 (2010).

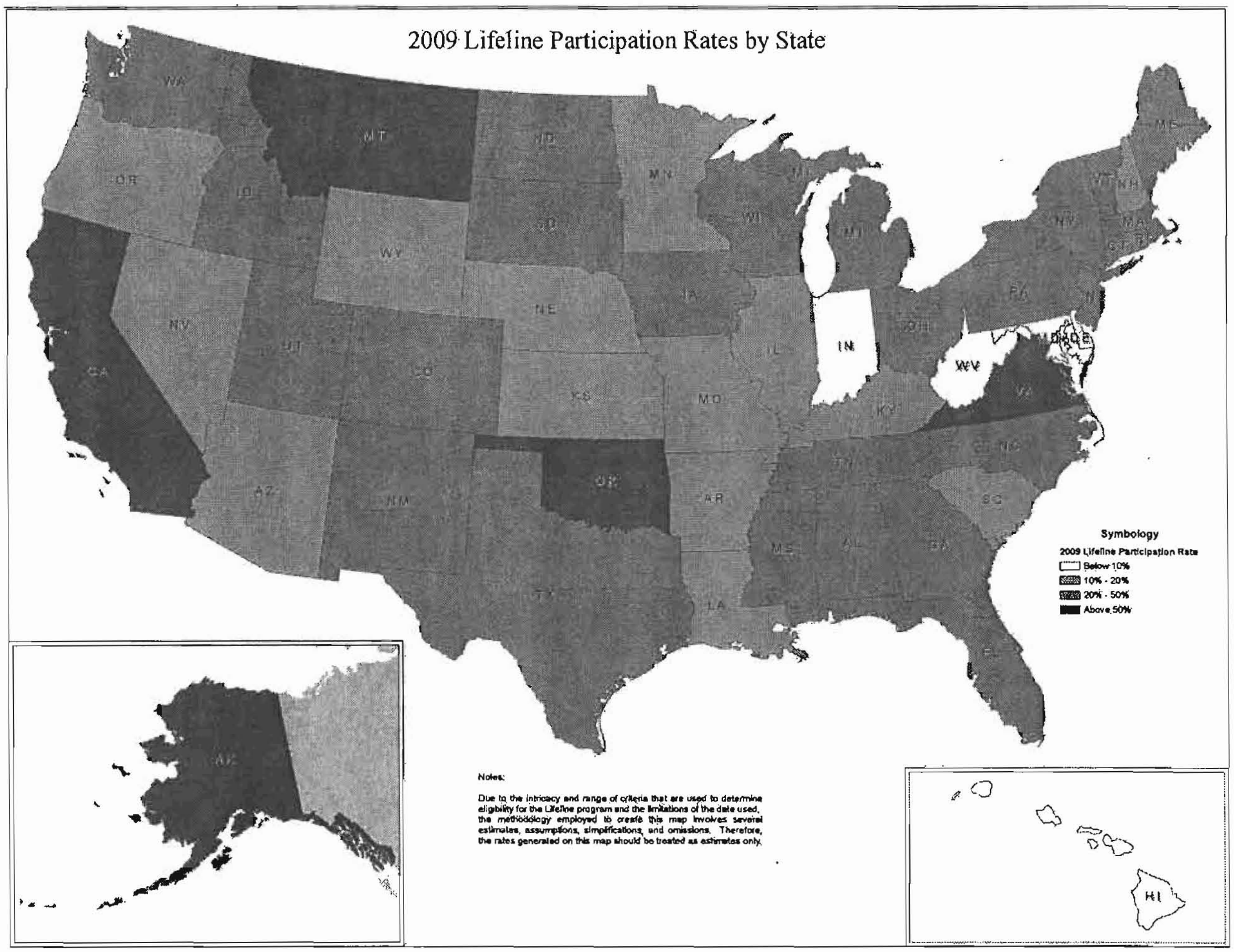
[38] 2010 GAO REPORT at 51.

[39] Non-default states that require ETCs to submit their verification results to USAC include Alabama, Arkansas, Arizona, New York, North Carolina, Pennsylvania, and West Virginia.

[40] *See* NATIONAL BROADBAND PLAN at 172 (*citing* Mark Burton et al., *Understanding Participation in Social Programs: Why Don't Households Pick up the Lifeline?*, 7 B.E. J. ECON. ANAL. & POL'Y 57 (2007), *available at* http://faculty.msb.edu/jtm4/Papers/BEJEAP.2007.pdf; Janice A. Hague et al., *Whose Call Is It? Targeting Universal Service Programs to Low-Income Households' Telecommunications Preferences*, 33 TELECOMM. POL'Y 129, 136-38 (2009), *available at* http://warrington.ufl.edu/purc/purcdocs/papers/0805_Hauge_Whose_Call_Is.pdf.

[41] *See 2010 Universal Service Monitoring Report* at Table 2.1; *see also* USAC 2009 Lifeline Participation Rate Data, http://www.usac.org/li/about/participation-rate-information.aspx (last visited Mar. 1, 2011).

Chart 2



26. Telephone subscribership among low-income Americans has grown significantly since 1984. Eighty percent of low-income households had telephone service in 1984, compared to a national average of 92 percent at that time. The gap has narrowed considerably since the inception of Lifeline/Link Up: As of March 2009, 90 percent of low-income households subscribed to telephone service in their home, compared to a national average of 96 percent.[42] Moreover, states with higher dollar amounts of Lifeline support exhibited higher growth in phone subscribership from 1997 to the

[42] *2010 Universal Service Monitoring Report* at 2-2. The Commission's current telephone subscription penetration rate is based on the Census Bureau's Current Population Survey (CPS), which does not specifically break-out wireless, VoIP, or over-the-top voice options available to consumers. FEDERAL COMMUNICATIONS COMMISSION, WIRELINE COMPETITION BUREAU, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, TELEPHONE SUBSCRIBERSHIP IN THE UNITED STATES 1 (2010) (WCB SUBSCRIBERSHIP REPORT). The specific questions asked in the CPS are: "Does this house, apartment, or mobile home have telephone service from which you can both make and receive calls? Please include cell phones, regular phones, and any other type of telephone." And, if the answer to the first question is "no," this is followed up with, "Is there a telephone elsewhere on which people in this household can be called?" If the answer to the first question is "yes," the household is counted as having a telephone "in unit." If the answer to either the first or second question is "yes," the household is counted as having a telephone "available." *Id.* at 3.

present.[43]

27. The amount of support has also grown significantly. The program provided $1.3 billion in support in 2010,[44] compared to an inflation-adjusted $221 million in support to low-income households in 1997.[45] The initial growth in Lifeline/Link Up after the implementation of the 1996 Act was due in large part to the expansion of the program to all fifty states and the increased level of support provided compared to levels prior to the 1996 Act.[46] In 2000, the Commission provided enhanced support to households on Tribal lands.[47] The program continued to grow between 2001 and 2004 due in part to increases in the federal subscriber line charge, which determines Lifeline support levels.[48] Meanwhile, over the years, wireless companies increasingly sought ETC designations, providing additional options for Lifeline service. In the last several years, a number of pre-paid wireless providers have become Lifeline-only ETCs,[49] fiercely competing for the business of low-income consumers by marketing "free"

[43] States that have provided a full or high level of Lifeline support for telephone service for low-income consumers experienced an average growth in telephone penetration rates for low-income households of 4.6% from March 1997 to March 2009. The states are divided into three groups: "Full or High Assistance" states providing at least $3.00 of state support to get federal matching support of at least $1.50 per line per month; "Intermediate Assistance" states providing between $0.50 and $3.00 of state support, and receiving between $0.25 and $1.50 federal matching support per line per month; "Basic or Low Assistance" states providing less than $0.50 of state support, and receiving less than $0.25 federal matching support per line per month. *See 2010 Universal Service Monitoring Report* at 6-8. In contrast, during the same time period, states that provided a basic or low level of Lifeline support experienced an average increase in telephone penetration rates of only 2.9%.

[44] This figure is based on USAC estimates. *See* UNIVERSAL SERVICE ADMINISTRATIVE COMPANY, QUARTERLY ADMINISTRATIVE FILINGS FOR 2011, SECOND QUARTER (2Q), APPENDICES AT M04 (filed Jan. 31, 2011) (USAC 2Q 2011 FILING), *available at* http://www.usac.org/about/governance/fcc-filings/2011/quarter-2.aspx.

[45] *See 2010 Universal Service Monitoring Report* at Chart 2-2. Adjustments for inflation were calculated using the Bureau of Labor Statistics' Consumer Price Index Inflation Calendar. *See* http://www.bls.gov/data/inflation_calculator.htm (last visited Mar. 1, 2011).

[46] Support levels grew from an inflation-adjusted $231 million in 1996 to $621 million in 1998, the first year after implementation of section 254. *See 2010 Universal Service Monitoring Report* at Chart 2-2.

[47] In 2010, $101 million was provided to households on Tribal lands (estimated based on annualizing claims for the first 9 months of 2010). 2Q USAC filing appendix LI07 – Low Income Support Distributed by State in 2007 through 3Q2010, *available at*: http://www.usac.org/about/governance/fcc-filings/2011/Q2/LI07%20%20Low%20Income%20Support%20Distributed%20by%20State%20in%202007%20and%20through%203Q2010.xls.

[48] Support levels grew from an inflation-adjusted $819 million in 2002 to $927 million in 2004. *See 2010 Universal Service Monitoring Report* at Chart 2-2.

[49] *See, e.g.*, Petition *of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (*TracFone Forbearance Order*); *TracFone ETC Designation Order*, 23 FCC Rcd at 6206; *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petition for Designation as an Eligible Telecommunications Carrier in the State of New York; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia; Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of North Carolina; Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009) (*Virgin Mobile Forbearance Order*); *Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45, WC Docket No. 09-197, Order, 25 FCC Rcd 8784 (2010) (*i-wireless Forbearance Order*); *Telecommunications Carriers Eligible for Universal Service Support; Federal-State Joint Board on Universal Service; Head Start Petition for Forbearance; Consumer Cellular Petition for Forbearance; Midwestern Telecommunications Inc. Petition for Forbearance; Line Up, LLC Petition for Forbearance*, WC Docket No. 09-197, CC Docket No. 96-45, Order, 25 FCC Rcd 10510 (2010) (*Global*

(continued....)

phone service.[50] This development has expanded choices in many states for low-income consumers who may have been unlikely to subscribe to wireline voice service,[51] but it has also led to significant growth in the fund. Pre-paid wireless ETCs now account for one-third of all Lifeline reimbursements.[52]

III. ESTABLISHING PROGRAM GOALS AND MEASURING PERFORMANCE

28. As we move forward to reform and modernize the Commission's low-income support mechanisms, we seek comment on the program's performance goals, consistent with our statutory obligations, and on how best to measure the program's performance in achieving those goals.

29. In establishing performance goals, we are guided in the first instance by the Act. Section 254(b) outlines the principles upon which the Commission and the Joint Board are to base policies for the "preservation and advancement of universal service." These principles include the notion that quality services should be available at "just, reasonable and affordable" rates, and that consumers in all regions of the nation, including low-income consumers, should have access to telecommunications and information services that are reasonably comparable to services in urban areas at reasonably comparable rates.[53] The statute specifies that there should be specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service. Section 254(c)(1) of the Act also sets forth certain criteria that we should consider when deciding what services are eligible for universal service support, including the extent to which those services are "essential to education, public health, or public safety;" and "consistent with the public interest, convenience, and necessity."[54]

30. Historically, the primary goal for the Lifeline/Link Up program has been to facilitate the availability of affordable phone service to low-income households. Over time, telephone penetration rates for low-income consumers have increased, although they still remain below the national average and a six percent gap has remained relatively stable in recent years.[55]

31. In 2007, the Commission took initial steps to improve the management of the low-income

(Continued from previous page)
Forbearance Order).

[50] For example, TracFone noted that the initial SafeLink Wireless offering was 68 free minutes per month until a competitor offered 200 free minutes, to which TracFone responded with its 250-minute offer. *See* TracFone Dec. 7, 2010 *Ex Parte* Letter, at 5.

[51] NATIONAL BROADBAND PLAN at 173. According to some, mobile phones are becoming more essential than landline phones for low-income consumers. *See, e.g.*, Janice A. Hauge, Eric P. Chiang & Mark A. Jamison, *Whose Call is It? Targeting Universal Service Programs to Low-Income Households' Telecommunications Preferences*, 33 TELECOMM. POL'Y 129, *available at* http://ssrn.com/abstract=1324281. Pre-paid wireless offerings are often ideal for low-income or unemployed/under-employed consumers because they enable consumers to better manage expenses. *See, e.g.*, Nexus TracFone Link Up Comments, at Attach. 1, 6 (Declaration of August Ankum and Olesya Denney, QSI Consulting).

[52] *See* USAC 2Q 2011 FILING, Appendices at LI04 (Quarterly Low Income Disbursement Amounts by Company (4Q2010)), *available at* http://www.usac.org/about/governance/fcc-filings/2011/quarter-2.aspx.

[53] *See* 47 U.S.C. § 254(b)(1),(3).

[54] *See* 47 U.S.C. § 254(c)(1)(A),(D).

[55] We note, however, that the disparity in penetration rates for low-income households living on Tribal lands compared to the national average has been significantly higher. *See* U.S. GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, GAO 06-189, TELECOMMUNICATIONS: CHALLENGES TO ASSESSING AND IMPROVING TELECOMMUNICATIONS FOR NATIVE AMERICANS ON TRIBAL LANDS 2 (2006) (2006 GAO REPORT), *available at* http://www.gao.gov/new.items/d06189.pdf.

program by adopting measures of efficiency and effectiveness.[56] At that time, however, the Commission concluded that it did not have sufficient data to determine appropriate performance goals.[57] In 2010, GAO noted that while the Commission had developed performance measures, it had not quantified its goal of increased telephone subscribership among low-income households.[58] GAO also noted the importance of developing baseline and trend data for past performance, and of identifying target performance levels for multi-year goals.

32. Clear performance goals and measures should enable the Commission to determine not just whether federal funding is used for intended purposes, but whether that funding is accomplishing the program's ultimate objectives.[59] We now propose to establish explicit performance goals in order to provide a basis for determining whether Lifeline/Link Up is successfully promoting and advancing the availability of quality services at just, reasonable, and affordable rates for low income consumers.[60]

33. Consistent with the Act and GAO's recommendations, we seek comment on three specific goals and related performance measures for the Lifeline/Link Up program.

34. We propose that our first performance goal be to preserve and advance the availability of voice service for low-income Americans.[61] We note the vital role that voice telephony continues to play for consumers, particularly for public safety and public health. We propose to define "availability" of voice service for purposes of Lifeline/Link Up to mean that low-income households have access to that service. We propose to adopt a goal of eliminating any difference in the availability of voice service for low-income consumers compared to non-low-income consumers.

35. We seek comment on how to measure availability of voice services for low-income

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[56] In 2007, the Commission noted the goal of increasing phone service subscribership among low-income households. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*; *Federal-State Joint Board on Universal Service*; *Schools and Libraries Universal Service Support Mechanism*; *Rural Health Care Support Mechanism*; *Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-6, 02-60, 03-109, CC Docket Nos. 96-45, 97-21, Report and Order, 22 FCC Rcd 16372, 16394-95, para. 50 (2007) (*2007 Comprehensive Review Order*).

[57] *2007 Comprehensive Review Order*, 22 FCC Rcd at 163955, para. 51. The Commission noted that it would continue to evaluate the effectiveness of the performance measures adopted for the low-income program by monitoring the number of program beneficiaries (carriers), the number of low-income customers for which each carrier receives low-income support, and the number of connections supported. The Commission committed to looking at other measurements as well, such as the time it takes USAC to process support payments and authorize disbursements, the average (mean) and median support amount awarded per carrier, and total amount of support disbursed. The Commission also required USAC to report annually to the Commission on the Lifeline annual verification results filed by Qwest, Verizon, and AT&T. *Id.* at 16395, para. 52.

[58] 2010 GAO REPORT at 24.

[59] The Government Performance and Results Act (GPRA) of 1993 established statutory requirements for federal agencies to engage in strategic planning and performance measurement. *See* Government Performance and Results Act of 1993, Public Law No. 103-62. GPRA is intended to improve efficiency and effectiveness of federal programs through the establishment of specific goals for program performance. *Id.* GPRA requires federal agencies to: (1) develop strategic plans with long-term, outcome-related goals and objectives; (2) develop annual goals linked to the long-term goals; and (3) measure progress toward the achievement of those goals in annual performance plans and report annually on their progress in program performance reports. *See* 5 U.S.C. § 306; 31 U.S.C. §§ 1115 – 1116.

[60] 47 U.S.C. §254(b)(1).

[61] *See* 47 U.S.C. § 254(b); *see also* Qwest Communications Comments, WC Docket No. 05-195 (filed Nov. 14, 2008).

households. The Commission has historically measured telephone penetration, which measures voice service subscriptions, as a proxy for availability.[62] We propose to establish as an outcome measure the difference between voice service subscribership rates for low-income households eligible for the Lifeline and Link Up program and voice service subscribership rates for the households in the next higher income level as defined in the CPS.[63] Based on the most recent information this would suggest a target subscribership rate for low-income households of 96.9 percent, which is the subscribership rate for households with incomes in the $35,000-$39,999 range.[64] We seek comment on whether we should use another measure of availability.[65] We seek comment on how we should define "low-income household" for the purpose of this performance goal in light of the differing eligibility standards that exist today from state to state. For instance, for simplicity, should we use 135% of the Federal Poverty Guidelines for a family of four as the threshold for monitoring program performance? We seek comment on whether we should instead compare subscribership rates for eligible low-income households with some other measure, such as the mean or median subscribership rate for all non-low income households.

36. We propose as our second performance goal to ensure that low-income consumers can access supported services at just, reasonable, and affordable rates.[66] We have concluded in the past that the concept of affordability has both an absolute and a relative component.[67] The absolute component takes into account whether an individual has enough money to pay for a service, and the relative component takes into account whether the cost of a service would require a consumer to spend a disproportionate amount of his or her income on that service.[68] Comparing subscribership or adoption rates among low-income households to nationwide subscribership and adoption rates may be useful in evaluating whether supported services are available to low-income households and affordable in absolute terms, but those comparisons may not be dispositive in evaluating whether low-income households can afford those services in relative terms.[69] We seek comment on whether an appropriate performance measure for this goal would be to compare the percentage of low-income household income spent on a voice service to the percentage of household income spent on voice service for the next highest income range as identified by the Bureau of Labor Statistics.

37. As our third performance goal, we propose to ensure that our universal service policies provide Lifeline/Link Up support that is sufficient but not excessive to achieve our goals.[70]

[62] *See* WCB SUBSCRIBERSHIP REPORT at 1-3.

[63] WCB SUBSCRIBERSHIP REPORT at Table 4.

[64] *Id.*

[65] *See Modernizing the FCC Form 477 Data Program, Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership, Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, Review of Wireline Competition Bureau Data Practices*, WC Docket Nos. 11-10, 07-38, 08-190, 10-132, Notice of Proposed Rulemaking, FCC 11-14, paras. 32-33, 77 (rel. Feb. 8, 2011) (*Broadband Data NPRM*).

[66] *See* 47 U.S.C. § 254(b)(1). When the Commission initially implemented the 1996 Act, it noted that a variety of factors may impact affordability of phone service, including non-rate factors such as income levels, cost of living, population density, and the size of the customer's local calling area. *Universal Service First Report and Order*, 12 FCC Rcd at 8840-42, paras. 114-17.

[67] *Universal Service First Report and Order*, 12 FCC Rcd at 8837-38, para. 110.

[68] *Id.* at 8837-38, para. 110.

[69] *Id.* at 8839, para. 113.

[70] *See* 47 U.S.C. § 254(b)(5).

Administering USF requires balancing competing demands, recognizing that increased demand for funds imposes a greater contribution burden on consumers and businesses. As we have noted previously, the principles outlined in section 254 require us to ensure that quality services are affordable for all consumers but we must also be "mindful of the effects that expanded universal service mechanisms may have on consumers."[71] This goal includes ensuring that the Lifeline/Link Up program is accountable and fiscally responsible, with support disbursed efficiently and effectively only to those who need it.

38. In the *Connect America Fund Notice*, we sought comment on measuring the relative contribution burden on consumers over time, defined as total inflation-adjusted expenditures of the Fund each year, divided by the number of American households.[72] We seek comment here on whether a similar measure would be appropriate for Lifeline/Link Up, specifically tracking whether the inflation-adjusted Lifeline/Link Up expenditure per American household is increasing or decreasing over time. In 2010, the contribution burden for Lifeline/Link Up was equivalent to approximately $0.95 per U.S. household per month.[73]

39. We also recognize that a key component of achieving our goal of providing support that is sufficient but not excessive is to protect the universal service fund against waste, fraud, and abuse. That benefits consumers and keeps rates more affordable for all consumers by reducing the need to collect funds for the program that are not appropriately utilized. We propose a number of rule changes in this Notice that would reduce waste, fraud, and abuse in the program. We seek comment on whether we should establish as a performance measure keeping erroneous payments in the program below a specified level, for instance by reducing levels of ineligible recipients to a specified percentage.[74]

40. We also seek comment on appropriate efficiency metrics. For example, is there a way to measure increases in the percentage of low-income household subscribership relative to the amount of funding spent per household receiving Lifeline/Link Up? We seek comment on this and other measures of efficiency.

41. Although we are committed to taking all necessary steps to eliminate reduce waste, fraud, and abuse, we also recognize the potential negative impact of increased government regulatory burden, especially on small companies, of some of the measures that can assist in detecting and deterring waste, fraud and abuse. We seek comment on how best to balance these competing interests.

42. We seek comment on whether these three goals and associated performance measures are appropriate for the Lifeline/Link Up program and ask that commenters consider the reform proposals below in light of the proposed goals and performance measures outlined here. Are there additional or

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[71] *See, e.g., Universal Service First Report and Order*, 12 FCC Rcd at 8845-46, para. 125; *see also High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4087, para. 28 (2010) (*Tenth Circuit Remand Order*) (stating that "if the universal service fund grows too large, it will jeopardize other statutory mandates, such as ensuring affordable rates in all parts of the country").

[72] *USF/ICC Transformation NPRM*, FCC 11-13, at para. 487.

[73] This figure is derived by dividing the total projected disbursements for Lifeline/Link Up for 2010 ($1.3 billion) by the total number of households with telephone service (113.6 million). *See* USAC 2Q 2011 FILING, Appendices at M04, *available at* http://www.usac.org/about/governance/fcc-filings/2011/quarter-2.aspx; *see also* WCB SUBSCRIBERSHIP REPORT at Table 1. We note that contributions to USF are assessed on services provided to businesses as well as residential households; this calculation includes business contributions to the USF, so the amount per month on the phone bills of individual households is less.

[74] *See generally* http://paymentaccuracy.gov/ (showing the level of improper payments made by federal agencies for various programs since 2009) (last visited Mar. 1, 2011).

alternative goals and performance measures that we should consider? To the extent that these three goals and performance measures, or any others that the Commission may adopt, may be in tension with each other, commenters should suggest how we should prioritize among competing goals.

43. Last month we sought comment on whether broadband should be a supported service. If broadband becomes a supported service, should we adopt a performance goal of advancing the availability of broadband to low-income households? Analogous to our proposal in the voice context, we seek comment on whether the Commission should establish as an outcome measure the difference between the broadband penetration rates for low-income households and non-low-income households in the next higher income level as defined in the CPS, if broadband becomes a supported service. Should we consider broadband usage in addition to broadband adoption? Unlike voice service, there is a much larger gap in penetration rates for broadband between low-income households and the general population. Should we establish a specific numerical target for narrowing that gap over a particular time period?

44. If Lifeline is modernized to support broadband, how should we measure affordability for broadband? Should we measure affordability separately for voice, broadband, and bundled offerings? We seek comment on what data we would need to monitor the program's progress if we were to adopt such a performance measure, and the least burdensome means of obtaining such data.[75]

45. We invite commenters to propose additional or alternative goals and measures for the program. We also seek comment on how our performance measures should take into account the actions of other governmental agencies, such as state regulators, that may impact the Commission's ability to meet its universal service goals. We note that developing the record on these issues is consistent with GAO's suggestions.[76]

IV. IMMEDIATE REFORMS TO ELIMINATE WASTE, FRAUD, AND ABUSE

46. We are committed to eliminating waste, fraud, and abuse in Lifeline/Link Up, and to identifying and penalizing program violations when they occur. We recognize that the recent expansion in program demand, as well as marketplace developments, present increased concerns about potential waste and misconduct. We propose to strengthen our rules to more rigorously ensure that the program subsidizes no more than one subscription per eligible residential address, and to improve audits of the program. We also propose rule changes to ensure that carriers are reimbursed only for the provision of Lifeline services to current customers. Finally, we propose to modify our rules to the extent that they offer unnecessary reimbursement to carriers for expenses that may be inflated or unjustified. The continued success of Lifeline/Link Up depends on targeting support to those who qualify, and ensuring that support does not extend beyond the confines of our rules.

A. Duplicate Claims

1. Background

47. To achieve the statutory goal of providing telecommunications access to low-income subscribers, while at the same time controlling the growth of the universal service fund and preventing waste, fraud, and abuse, both the Commission and the Joint Board have consistently stated that Lifeline support is limited to a single line per residence.[77] In a series of orders granting wireless ETCs forbearance

[75] *See Broadband Data NPRM*, FCC 11-14, at para. 103.

[76] *See* 2010 GAO REPORT at 30.

[77] *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8306 para. 4 (2004) ("Lifeline provides low-income consumers with discounts of up to $10.00 off the monthly cost of telephone service for a single telephone line in their principal residence."); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8957 para. 341 (1997) (continued....)

from other program rules, the Commission required those ETCs to take specific steps to further compliance with this requirement. Specifically, the Commission required each wireless ETC granted forbearance to obtain certifications from Lifeline customers at the time of service activation and annually thereafter that they receive Lifeline service from that ETC only, and to establish safeguards to prevent customers from receiving multiple Lifeline subsidies from that ETC at the same address.[78]

48. Recently, however, evidence has come to light suggesting that in many cases multiple ETCs are seeking reimbursement for Lifeline service provided to the same residence. For example, an audit by USAC found a significant duplication rate between certain ETCs in two states.[79] In response to that finding, on January 21, 2011, the Commission's Wireline Competition Bureau sent a letter to USAC providing direction for resolving duplicate Lifeline claims.[80] On February 22, 2011, a group of industry associations filed a petition for reconsideration and request for stay of the January 21st letter.[81]

49. In addition, parties have raised concerns about the scope and enforceability of the single line per residence rule. In 2009, TracFone Wireless filed a letter requesting that the Commission clarify the scope of the rule as applied to group living facilities, such as nursing homes, and the Commission sought comment on that request.[82] In their petition for reconsideration and request for stay of the Bureau's January 21, 2011 letter to USAC, the industry associations acknowledge evidence of duplicate claims,[83] but contend that the Commission has never promulgated a legally binding one line per household rule.[84]

(Continued from previous page)
(*First Report and Order*) ("qualifying subscribers may receive assistance for a single telephone line in their principal residence"); *Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, CC Docket No. 96-45, WC Docket No. 03-109, 2010 WL 4390131, para. 34 (Joint Board 2010) ("the Joint Board agrees with commenters that suggest it is important to verify whether Lifeline recipients are receiving support in compliance with the Commission's one Lifeline-supported line per household rule"); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 18 FCC Rcd 6589, 6592 para. 4 (Joint Board 2003) ("Lifeline provides low-income consumers with monthly discounts on the cost of receiving telephone service for a single telephone line in their principal residence.").

[78] *See Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless Forbearance* Order, 25 FCC Rcd at 8790, para. 16; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3387, 3392, paras. 12, 25; *TracFone Forbearance Order*, 20 FCC Rcd at 15099, 15103, paras. 6, 18.

[79] USAC Independent Auditor's Report, Audit No. LI2009BE006 (December 3, 2010) (TracFone Audit).

[80] Letter from Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to Richard Belden, Chief Operating Officer, Universal Service Administration Company, DA 11-110 (Wireline Comp. Bur. 2011), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/DA-11-110A1.pdf.

[81] *See Petition for Reconsideration of the Wireline Competition Bureau's January 21, 2011 Letter to the Universal Service Administrative Company*, CC Docket No. 96-45, WC Docket No. 03-109 (Feb. 22, 2011) (*Petition for Reconsideration*); *Request for Stay of the Wireline Competition Bureau's January 21, 2011 Letter to the Universal Service Administrative Company*, CC Docket No. 96-45, WC Docket No. 03-109 (February 22, 2011) (*Request for Stay*).

[82] *See Comment Sought on TracFone Request for Clarification of Universal Service Lifeline Program "One-Per-Household" Rule As Applied to Group Living Facilities*, WC Docket No. 03-109, Public Notice, 24 FCC Rcd 12788 (Wireline Comp. Bur. 2009) (*One-Per-Household" Public Notice*).

[83] *See Request for Stay*, Declaration of Dewey E. Alexander III, Director Product Marketing, AT&T Services, at para. 3 (noting a USAC finding that in one state, more than 30,000 Lifeline subscribers were receiving support from both AT&T and another ETC) (AT&T Affidavit).

[84] *See Petition for Reconsideration* at 12-13.

50. The Lifeline/Link Up program provides support for "a single telephone line in a Lifeline subscriber's principal residence."[85] As previously noted, when the program rules were initially adopted, most customers had only one option for telephone service: their incumbent LEC's wireline service. Today, most low-income households have a choice of voice service from one or more wireline providers and potentially multiple mobile wireless providers.[86] These expanded service offerings create greater risks that multiple Lifeline discounts may be provided to a single residence. Notwithstanding existing program protections, including verification and certification requirements,[87] a subscriber may apply for and obtain universal service support from more than one provider, either knowingly or unwittingly. The risk of consumers inadvertently obtaining duplicate supported services is aggravated by the fact that some Lifeline providers brand their program offerings with names that do not necessarily make clear that the offerings are supported by Lifeline, *e.g.*, "Assurance" or "SafeLink Wireless." As a result, consumers may not be aware that they are improperly obtaining duplicate benefits for a given residence. In addition, multiple carriers may seek reimbursement for services provided to a single subscriber, potentially unaware that a supported service is duplicative.

51. Competition among ETCs offering Lifeline-supported services in the same service territory has also exacerbated the potential for duplicative support. For example, with a pre-paid wireless service offering, the consumer pays for service in advance and does not receive a monthly bill at a fixed address. This may make it difficult to determine whether the Lifeline support for the pre-paid service is being provided to an address that is also receiving another Lifeline-subsidized service. Although the Commission has taken significant steps to mitigate this risk,[88] concerns remain about supporting multiple Lifeline services when the customer is not associated with a specific residential address.

2. Discussion

52. We propose rules that will reduce the likelihood that residents of a single address will

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[85] *2004 Lifeline and Link Up Order/FNPRM*, 19 FCC Rcd at 8306, para. 4; *see also Universal Service First Report and Order*, 12 FCC Rcd at 8957, para. 341. A similar requirement applies to Link Up. *See* 47 C.F.R. § 54.411(a)(1).

[86] The Commission's 2010 Telephone Trends Report indicates nearly 60% of households have both a landline and a wireless telephone. FEDERAL COMMUNICATIONS COMMISSION, WIRELINE COMPETITION BUREAU, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, TRENDS IN TELEPHONE SERVICE at Table 7.4 (2010) (TRENDS IN TELEPHONE SERVICE), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf. The Universal Service Monitoring Report also shows that telephone penetration rates for low-income households was 90.4% in March 2009 as compared with 88% in March 2004. *2010 Universal Service Monitoring Report* at 2-2; *Universal Service Monitoring Report*, CC Docket No. 98-202, Prepared for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Table 2-2 (2005), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-262986A4.pdf. CTIA reports that wireless penetration across the United States is approximately 93% in June 2010 as compared with 11% in June 1995. CTIA Media, Industry Info, U.S. Wireless Quick Facts, *available at* http://www.ctia.org/media/industry_info/index.cfm/AID/10323 (last visited Mar. 1, 2011) (CTIA Quick Facts).

[87] *See* 47 C.F.R. §§ 54.409, 54.410. For example, currently, certification rules applicable in federal default states require consumers that receive income-based support to provide certification under penalty of perjury as to their qualification to receive support and as to the number of individuals in their household. *See* 47 C.F.R. § 54.410(b).

[88] The Commission has conditioned forbearance from the facilities requirement for limited ETC designation upon the carrier requiring its customers to self-certify at time of service activation and annually thereafter that they are head of household and receive Lifeline-supported service only from that carrier. *See TracFone Forbearance Order*, 20 FCC Rcd at 15095; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3381.

receive more than one subsidized service through the program.[89] We understand that there may be reasons to create limited exceptions to the one-per-residential-address rule that we propose in Section V. In this proceeding, we plan to develop a full record to craft appropriately narrow exceptions to application of this proposed rule. We intend to consult with ETCs, Tribal communities, the states, and other interested parties to devise a rule that maximizes the number of Americans with access to communications services, but also protects the fund from waste, fraud, and abuse.

53. In addition, it may be necessary for the Commission to take action on an interim basis while this proceeding is pending to address immediately the harm done to the Fund by USAC reimbursing ETCs for duplicate claims.[90] The purpose of the Lifeline program is to provide telecommunications access to low-income subscribers. Recent audit results indicate there is a risk that a significant number of Lifeline consumers may be unnecessarily and improperly receiving support for more than one service per residential address.[91] To address the problem of wasteful, duplicate Lifeline support, it may soon be necessary to adopt interim rules in this area while the record develops on the issues on which we are seeking comment.

54. To ensure that Lifeline support is limited to the amount necessary to provide access to telecommunications service for low-income subscribers, we propose several approaches to address duplicative support. We propose to adopt a new section 54.408 and to adopt several amendments to sections 54.400, 54.405, and 54.410 that would facilitate the enforcement of a one-per-residential address limitation.[92] We also propose to amend section 54.410 to require ETCs to submit to USAC unique household-identifying information for every supported household to help determine whether two or more ETCs are providing Lifeline-supported service to the same residential address.[93] We also propose remedies to address situations in which a consumer has received duplicate support and to deter such abuses. These proposals are a first step in deterring waste, fraud, and abuse, and we recognize there may be other appropriate actions that would take longer to implement, such as the creation of a database.

55. With these proposed rules, we seek to create incentives for carriers to avoid requesting support for duplicative services, and to impose penalties for those who continue to do so. We also seek to ensure that our rules protect subscribers' privacy and service providers' proprietary business information.

56. *Measures To Assist in Detecting Duplicate Claims.* A unique household identifier may be helpful to ensure that a residential address does not receive more than one subscription that is subsidized by the program. Specifically, we seek comment on amending section 54.410 by requiring ETCs to provide such information as customer names, addresses, social security numbers (either the full number or the last four digits), birthdates, or other unique household-identifying information to USAC on their Forms 497.[94] Would the benefits of requiring subscribers to provide such information outweigh the burdens, including possibly deterring some households from applying for benefits?

57. We seek comment on the best way to accomplish this efficiently and effectively

[89] *See* discussion *supra* Section IV.A (One-Per-Residence); discussion *infra* paras. 167-69 (One-per-residential address certification and verification); *see also* Appendix A.

[90] *See* discussion *supra* paras. 48-51.

[91] *See* TracFone Audit; AT&T Affidavit.

[92] *See* Appendix A, 47 C.F.R. §§ 54.400, 54.405, 54.408, 54.410.

[93] *See* Appendix A, 47 C.F.R. § 54.410; *see also* discussion of Tribal households at *infra* paras. 119-20.

[94] *See* Appendix A, 47 C.F.R. §§ 54.400, 54.405, 54.410.

consistent with privacy statutes, such as the Electronic Communications Privacy Act (ECPA)[95] and section 222 of the Communications Act.[96] For example, what information could an ETC be required to provide to USAC on its Form 497 that would ensure that a household is not receiving multiple subsidized subscriptions at the residence? What measures could USAC put in place to ensure compliance with ECPA or other applicable laws, such as requiring ETCs first to obtain subscriber consent to share information?[97] To the extent that use of customer proprietary network information (CPNI) is needed to ensure that a subscriber at a single residential address is not receiving multiple subsidized subscriptions, how do commenters suggest we ensure compliance with section 222 of the Communications Act and our implementing rules?[98] Are there other laws we need to consider and address? We also seek comment on how best to address any other concerns about privacy, security, or proprietary data issues resulting from collection of this data.[99] To streamline enforcement, we propose to require all ETCs to provide USAC with data in a consistent electronic format to facilitate USAC's detection of duplicate claims. We seek comment on the burdens this would impose on carriers participating in the program.

58. *Remedies To Address Duplicate Claims.* On January 21, 2011, the Wireline Competition Bureau provided guidance to USAC on how to resolve duplicate subsidies when more than one ETC seeks support from USAC for the same subscriber.[100] We propose to amend section 54.405 to codify this guidance.[101] We propose that when a duplicate subsidy is discovered, USAC is to notify the ETCs to discontinue including the duplicate subscriber in their list of subscribers for which the ETCs are claiming Lifeline support on the FCC Form 497.[102] ETCs must notify the subscriber by phone, and in writing where possible, and explain that the subscriber has 30 days to select one Lifeline provider or face de-enrollment from the program. Once the subscriber selects a single Lifeline provider for the household by signing a new certification, the chosen ETC must so notify USAC and the other ETC. The selected ETC may then seek reimbursement for the subscriber going forward, while the other ETC must de-enroll the household from its Lifeline service and may not seek reimbursement for that subscriber going forward.[103] We seek comment on this proposal.

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[95] 18 U.S.C. § 2702(a)(3) (prohibiting a provider of "electronic communication service to the public" from divulging a "record or other information pertaining to a subscriber" to any governmental entity unless otherwise permitted by ECPA).

[96] 47 U.S.C. § 222.

[97] *See* 18 U.S.C. § 2702(c)(2) (permitting a provider to divulge a record or other information pertaining to a subscriber "with the lawful consent of the customer or subscriber"); 47 U.S.C. § 222(c)(1).

[98] 47 U.S.C. § 222(a) (imposing on every carrier a "duty to protect the confidentiality of proprietary information"), (c)(1) (restricting use or disclosure of CPNI "[e]xcept as required by law or with the approval of the customer"), (d)(2) (permitting a carrier's use and disclosure of CPNI "to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services").

[99] *Id.*; *see also* Sprint Joint Board Reply Comments at 5; Database discussion *infra* Section VII.D at paras. 220-21.

[100] Letter from Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to Richard Belden, Chief Operating Officer, Universal Service Administration Company, DA 11-110 (Wireline Comp. Bur. Jan. 21, 2011), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/DA-11-110A1.pdf.

[101] *See* Appendix A, 47 C.F.R. § 54.405.

[102] *Id.*

[103] However, a customer may choose to re-enroll in the low-income program with the non-chosen ETC's Lifeline program at a later point in time. *See* 47 C.F.R. § 54.405(c), (d) (requiring 60 days notice for termination).

59. Several ETCs and trade associations have suggested an alternative duplicate resolution process to the Commission.[104] Under their proposal, USAC would send written notification, approved by the Commission, to all subscribers it identifies as receiving duplicate Lifeline subsidies. Such notice would require them to select one Lifeline provider from a list of providers on a form, which the subscriber would send back to USAC within 30 days.[105] USAC would, in turn, notify the affected ETCs about the written notification to the subscriber, and the ETCs would continue to provide Lifeline-supported service to the subscriber and seek reimbursement from the Fund until the USAC resolution process is complete.[106] When USAC receives a completed form from the customer with its selection, it would notify only the ETC not selected by the subscriber, and that ETC would be required to de-enroll the subscriber from its Lifeline service. Under this proposal, if USAC does not receive a completed form from the customer, USAC would be instructed to either notify both ETCs to de-enroll the subscriber, or contact the subscriber by phone to determine the subscriber's provider selection.[107] We seek comment on this proposal. Specifically, we seek comment on the advantages and disadvantages of USAC notifying the subscribers receiving duplicate support, as opposed to requiring ETCs to do so. Would subscribers be more or less likely to respond to an inquiry from USAC (an entity they likely are unfamiliar with) as opposed to their service provider? Would the form that USAC sends to the subscriber include every ETC serving the area or just the two ETCs involved with the request for duplicative support? To what extent would implementation of such a proposal increase administrative costs for USAC, and thereby impact the size of the Fund?

60. In the alternative, we could adopt a rule that when duplicate payments are identified, ETCs must notify the customer that they have 30 days to select a single ETC to provide Lifeline service going forward. If the customer makes a timely selection, the carrier not selected will no longer receive Lifeline support for that customer. If the customer fails to make a timely selection, the carrier that has provided continuous Lifeline service to the customer for the longest period of time would continue to receive Lifeline support and the other carrier would no longer receive support for that customer. We seek comment on this proposal.

61. We also seek comment on whether consumers receiving duplicative support should be de-enrolled in Lifeline after violating the one-per-residential-address requirement one or more times. After more than one duplicate subsidy is discovered, should the consumer listed as the subscriber, or the entire household, be de-enrolled from Lifeline? If de-enrollment is temporary, for how long should the exclusion from the program last? If permanently, on what basis? Should we deny eligibility only if there is evidence of intent to violate the "single support per residential address" provision, or if this is not the subscriber or household's first such violation? Should we impose stricter penalties on a consumer or household with multiple violations? Should we impose stricter penalties on a household receiving more than two Lifeline/Link Up subsidies? Should we first provide an opportunity for the subscriber to demonstrate that the household's dual enrollment was due to an inadvertent mistake or misunderstanding of applicable requirements? What information would need to be collected and maintained by USAC in

[104] Letter from United States Telecom Association, CTIA, Independent Telephone and Telecommunications Alliance, National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, Rural Cellular Association, AT&T, Western Telecommunications Alliance, CenturyLink, Qwest, Tracfone Wireless, Inc, Windstream Communications, Inc and Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-109 (February 15, 2011) (*ETC Duplicate Letter*).

[105] *Id.*

[106] *Id.*

[107] *Id.*

order to ensure that certain subscribers are prohibited from participating in the program in the future? If we do not permanently or temporarily bar such subscribers, what would be an appropriate remedy? Finally, we seek comment the potential impact on the telephone penetration rate among low-income households if this proposal were adopted.

62. We also propose a mechanism for reimbursing the Universal Service Fund in the event of duplicate claims. Our rules currently direct USAC to suspend or delay discounts, offsets, and support amounts provided to a carrier if the carrier fails to provide adequate verification of those discounts, offsets, or support amounts upon reasonable request, or "if directed by the Commission to do so."[108] We propose that USAC be required to seek recovery for funds from all ETCs with duplicates for the applicable period—*i.e.*, if one or more individual residing at the same address have been obtaining Lifeline support from two or more providers simultaneously, USAC would be required to seek recovery from all implicated providers for all support received during the period of duplicative service, which we propose to define as the period beginning at the time a duplicate is identified until the time at which it can be demonstrated that the consumer or household is no longer receiving duplicate benefits. This approach would create appropriately strong incentives for providers to take measures to ensure that they are not seeking excessive support. We note that in this situation support would have been provided in contravention of our "single support per residential address" rule, and thus, arguably, neither ETC should have received support during the period of duplicative support. Further, if the customer does not reply to the notice and is terminated from Lifeline by both ETCs, we propose that USAC recover all Lifeline support sought for that subscriber from both ETCs for the period of time between when the duplicate was first identified to the point at which the customer is terminated from the Lifeline program. We seek comment on this proposal. We also seek comment on, alternatively, requiring that USAC seek recovery only from the ETC that is not chosen by the consumer for the period of time over which duplicate Lifeline support was provided. We seek comment on this proposal. Further, we seek comment on whether we should enable ETCs to avoid reimbursement obligations if they demonstrate responsible efforts to avoid duplicative funding. What would those efforts be and how could they be shown? Should we establish certain minimum safeguards that could act as a safe harbor for ETCs? Should we restrict recovery only upon a showing of negligence by the ETC? Should the ETCs be permitted to seek reimbursement for any recovered funds from the subscriber? For all of the above proposals, and any other approaches suggested by commenters, we seek comment on how we should determine the period of duplicative coverage.

63. *Addresses*. Several stakeholders have noted that customers have not been permitted to obtain Lifeline or Link Up service when using a P.O. Box as their mailing address.[109] Rather, ETCs have required applicants seeking support to provide a unique residential address. This practice has been used to ensure that the subscriber is eligible for supported service and is not receiving more than one subsidized service. We note that the other information we propose to collect—such as name, birth date, and social security number—are unique to individuals but do not fully address concerns that different members of the same household are receiving subsidized service. In contrast, address information might be particularly suitable to prevent that situation. We seek comment on whether to codify as a rule the current practice of requiring unique residential addresses, in order to assist both ETCs and USAC in determining whether an applicant is already receiving Lifeline- or Link Up-supported services. Under such a rule, ETCs would be required to collect the residential addresses of their Lifeline and Link Up applicants before they provided discounted service. Even if a customer receives mail at a P.O. Box, the customer would have to provide a residential address to which its service would be tied.

[108] 47 C.F.R. § 54.707.

[109] *See, e.g.*, City of Cambridge TracFone One-Per-Household Clarification Comments at 2; NNEDV TracFone One-Per-Household Clarification Reply Comments at 2; SBI TracFone One-Per-Household Clarification Comments at 4-5; POTS TracFone One-Per-Household Clarification Comments at 2.

64. We seek comment on this proposal. Are there circumstances where a residential address could not be provided? Are there privacy concerns that we should take into account when requiring customers to provide a residential address? How should we treat transient applicants who do not have a fixed address, or consumers who use rural route addresses, for whom there may be no other U.S. Postal Service address?[110] Is there substitute information that we should require in the event that no residential address is available?

B. Pro Rata Reporting Requirements

65.. *Background.* An ETC may receive Lifeline program support only for active subscribers. If a customer stops receiving service from the ETC, or if the customer no longer satisfies the eligibility criteria, the ETC is not eligible for support for that customer.[111] ETCs submit FCC Form 497 to USAC when seeking reimbursement for eligible consumers.[112] Form 497 includes a line for ETCs to report pro rata funds for Lifeline customers who enrolled or disconnected during the month. The instructions for Line 9 of FCC Form 497 currently state: "If claiming partial or pro-rata dollars, check the box on line 9. Enter the dollar amount (if applicable) for all partial or pro-rated subscribers."[113]

66. Some ETCs have asserted that these instructions are ambiguous. For example, some ETCs contend that they are permitted, but not required, to report, and seek pro rata recovery for, customers that did not subscribe for the full month. They claim that the phrasing in Form 497 ("*If* claiming partial or pro rata dollars") indicates that such submissions are optional, and does not require the ETC to report partial or prorated subscribers. Some ETCs, including Qwest and Verizon, argue that reporting partial-month subscription data would be overly burdensome.[114] USAC has sought Commission guidance on this issue.[115]

67. *Discussion.* We propose to codify the rule that all ETCs must report partial or pro rata dollars when claiming reimbursement for Lifeline customers who receive service for less than a month.

[110] *See infra* paras. 119-20 (application of the One-Per-Residence Rule in Tribal Communities).

[111] *See, e.g.*, 47 C.F.R. § 54.405(c).

[112] *See* FCC Form 497, *available at* http://www.universalservice.org/_res/documents/li/pdf/Form-497-FCC-OMB-USAC—NO-calculations.pdf.

[113] *See* FCC Form 497, *available at* http://www.universalservice.org/_res/documents/li/pdf/Form-497-FCC-OMB-USAC—NO-calculations.pdf.

[114] *See* Qwest Communications Reply Comments, WC Docket No. 03-109 (filed April 23, 2010); *see also* Verizon and Verizon Wireless Comments, WC Docket No. 03-109 (filed April 9, 2010).

[115] *See* Letter from Richard A. Belden, Chief Operating Officer, Universal Service Administrative Company to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 03-109 (filed Feb. 23, 2010) (*USAC Letter*). Specifically, USAC notes that audits of the low-income program have identified carriers that have not prorated requests for Lifeline support amounts for customers whose Lifeline service is initiated or terminated mid-month, and asks the Commission what recovery action, if any, USAC should take against an ETC that has failed to pro-rate support claims for partial-month Lifeline customers. *See* USAC Letter at 1-2; *see also Comment Sought on AT&T Request for Review of a Decision of the Universal Service Administrative Company Concerning Audit Findings Relating to the Low-Income Program*, WC Docket No. 03-109, Public Notice, 24 FCC Rcd 7679 (2009); *Comment Sought on AT&T Request for Review of a Decision of the Universal Service Administrative Company Concerning Audit Findings Relating to the Low-Income Program*, WC Docket No. 03-109, Public Notice, 23 FCC Rcd 13497 (2008); *Comment Sought on Qwest Request for Review of a Decision of the Universal Service Administrative Company Concerning Audit Findings Relating to the Low-Income Program*, WC Docket No. 03-109, Public Notice, 23 FCC Rcd 7845 (2008); *Comment Sought on AT&T Request for Review of a Decision of the Universal Service Administrative Company Concerning FCC Form 497*, WC Docket No. 03-109, Public Notice, 23 FCC Rcd 6407 (2008).

Such a rule would ensure that all ETCs comply with the requirement that support may only be claimed for active subscribers, and thereby minimize waste of Lifeline funds. Carriers routinely bill customers for partial months, and should have the capacity in their billing systems to determine whether a customer is a Lifeline subscriber for the full billing period. We seek comment on our proposal.

C. Eliminating Reimbursement for Toll Limitation Service

68. *Background.* Toll limitation services (TLS) include both toll blocking, which prevents the placement of all long distance calls for which the subscriber would be charged, and toll control, which limits to a preset amount the long-distance charges a subscriber can incur during a billing period.[116] In the *Universal Service First Report and Order*, the Commission required ETCs to provide TLS to low-income subscribers. At the time, consumers typically purchased long distance service separately from local service, and rates for long distance were considerably higher than they are today.[117] The Commission was concerned at the time about studies demonstrating that the primary reason subscribers lost access to telephone service was failure to pay long distance bills.[118]

69. Our rules currently allow Lifeline support to compensate ETCs for the costs of offering toll limitation service at no charge to eligible low-income consumers.[119] ETCs' recovery of costs for providing TLS to Lifeline consumers is based on the costs that ETCs would otherwise not incur if they did not provide TLS to a given customer.[120]

70. *Discussion.* We propose amending our rules to eliminate Lifeline support for the costs of providing TLS to Lifeline customers. This rule, adopted more than a decade ago, may have outlived its usefulness, given reductions in long-distance calling rates. We also note that there is great variance in TLS costs claimed by ETCs seeking reimbursement, ranging from $0 to $36 per Lifeline customer per month.[121] Such variance may be due in part to the ambiguity of our rule governing TLS support, which states that support for TLS will be equal to the ETC's incremental costs, but does not define incremental TLS costs eligible for Lifeline reimbursement. It is unclear, however, whether providing TLS imposes *any* incremental costs on carriers, since a number of ETCs do not seek any reimbursement for TLS costs, despite providing TLS to their subscribers.[122] Moreover, the wide variance in support sought by ETCs suggests that some may be inflating their true costs. Elimination of Lifeline support for TLS could save the program roughly $23 million in 2011,[123] which, in turn, could be used to conduct pilot programs to

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[116] 47 C.F.R. § 54.400(d).

[117] Section 271 of the Telecommunications Act of 1996 prohibited the regional Bell operating companies (RBOCs) from offering most long-distance services until the Commission found that they had opened their local market to competition. *See* 47 U.S.C. § 271. Between 1999 and 2003, the Commission found that each of the RBOCs had satisfied the statutory criteria and accordingly was eligible to compete in the long-distance market. *See* TRENDS IN TELEPHONE SERVICE at 9-3. Since then, "the distinctions between the two markets have become blurred as customers acquired the ability to select among competing carriers" for all markets. *See id.* at 9-2.

[118] *Universal Service First Report and Order*, 12 FCC Rcd at 8980, para. 385.

[119] 47 C.F.R. § 54.403(c).

[120] *Id.*

[121] *See* Letter from Karen Majcher, Vice President, Universal Service Administrative Company to Trent Harkrader, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, CC Docket No. 96-45 (filed Feb. 25, 2011).

[122] *Id.*

[123] USAC 2Q 2011 FILING, at 17.

provide broadband support or otherwise utilized to provide eligible households with Lifeline discounts.[124] We seek comment on this proposal. In the alternative, should we adopt a flat amount of reimbursement for TLS, and if so, what would be an appropriate amount?

D. Customary Charges Eligible for Link Up

71. *Background.* Link Up support reimburses wireline and wireless ETCs for the revenue they forgo in reducing their customary charge for commencing telecommunications service and in deferring charges assessed for commencing service.[125] Link Up provides qualifying consumers with discounts of up to $30.00 of the initial costs of installing a single telecommunications connection at a consumer's principal place of residence;[126] qualifying residents of Tribal lands are eligible for additional Link Up support.[127] A consumer may not receive more than one Link Up discount and may be eligible for Link Up again only upon a change of his or her principal place of residence.[128]

72. Link Up disbursements vary across ETCs and are not proportionate to Lifeline reimbursements.[129] In December 2010, TracFone filed a Petition for Declaratory Ruling with the Commission seeking a ruling that ETCs are not eligible to receive Link Up reimbursements from the federal Universal Service Fund unless the ETC imposes on all of its customers a customary charge for commencing telecommunications service.[130] TracFone notes that providing Link Up subsidies for activation charges that are not routinely imposed on customers violates the purpose of the Link Up program and constitutes a waste of USF funds.[131] Several commenters agree, and suggest that the only charges eligible for Link Up reimbursement should be charges imposed on all customers, rather than charges fabricated by carriers for the purpose of receiving USF.[132]

73. *Defining Customary Charge.* We seek to eliminate any incentive or opportunity for carriers to impose charges on program participants in order to increase universal service support, as that would represent a waste of funds. We therefore propose to amend our rules to define "customary charge for commencing telecommunications service" as the ordinary initiation charge that an ETC routinely

[124] *See infra* Section IX.B.3 (Broadband Pilot).

[125] 47 C.F.R. §§ 54.411, 54.413. Most pre-paid wireless ETCs do not receive Link Up support. *See, e.g., TracFone Forbearance Order*, 20 FCC Rcd at 15098, para. 6 (2005).

[126] 47 C.F.R. § 54.411.

[127] *See* 47 C.F.R. § 54.411(a)(3).

[128] 47 C.F.R. § 54.411(c).

[129] For example, some ETCs are receiving a significant amount of Link Up while other ETCs with similar Lifeline expenditures are not. *See* USAC 2Q 2011 FILING, Appendices at LI04 (Quarterly Low Income Disbursement Amounts by Company (4Q2010)), *available at* http://www.usac.org/about/governance/fcc-filings/2011/quarter-2.aspx (showing that Link Up disbursements vary significantly by ETCs and do not correspond with the amount of Lifeline support sought by the ETCs).

[130] *TracFone Wireless Inc. Petition for Declaratory Ruling*, WC Docket No. 09-197, CC Docket No. 96-45 (filed Dec. 1, 2010) (*TracFone Link Up Petition*) (arguing that at least one ETC is imposing a customary charge only on low income consumers but not other consumers).

[131] *Id* at 8-9.

[132] AT&T TracFone Link Up Petition Comments at 3 (agreeing that an ETC cannot impose a service activation fee on low-income consumers only); Budget PrePay, Inc and Great Call, Inc. TracFone Link Up Petition Comments at 3-4; Ohio TracFone Link Up Petition Comments at 3.